IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.75 OF 2006

Janak Narayan Patel ...Appellant.

Vs.

Sonali Janak Patel ...Respondent.

Mr.Hitesh Vyas, Advocate for the appellant.

Ms.Prerna Shrivastav with Ms.Pallavi N. Ghalsani, Advocates for the respondent.

CORAM : SMT.RANJANA DESAI AND SMT.V.K.TAHILRAMANI,JJ.

DATED : SEPTEMBER 18, 2006.

P.C.:-

1. The respondent had filed P.A.485 of 2003 in the Family Court No.4, Pune for restitution of conjugal rights. In that petition, the appellant filed a counter claim for a decree of divorce on the ground of cruelty. By the impugned order, the petition for restitution of conjugal rights filed by the respondent was dismissed. The counter claim for divorce filed by the appellant was also rejected. In place thereof a decree for judicial separation was passed on the ground of cruelty under section

13(1)(ia) of the Hindu Marriage Act, 1955.

2. Today, we have heard the learned counsel for the appellant and the respondent. The appellant and the respondent are present in the Court. The learned counsel for the parties have stated on instructions from their respective clients that the parties have amicably settled the dispute involved in this appeal. According to the appellant and the respondent, it is no longer possible for them to stay together. They have mutually agreed to obtain a decree of divorce by mutual consent. Therefore, through their respective counsel they have requested this Court to dissolve their marriage by a decree of divorce by mutual consent.

3. Hence by mutual consent P.A.485 of 2003 is converted into a petition for a decree of divorce by mutual consent. The impugned judgment and decree dated 26.5.2006 passed by the Family Court No.4, Pune is set aside. The marriage between the appellant and the respondent stands dissolved by a decree of divorce by mutual consent under section 13(B) of the

Hindu Marriage Act, 1955. This decree shall substitute the impugned decree.

4. Today, in our presence, the counsel for the appellant has handed over a cheque in the sum of Rs.68,000/- (Rupees sixty eight thousand only) drawn in favour of respondent-wife to the counsel for the respondent. The learned counsel for the respondent has handed over the said cheque to the respondent-wife. The learned counsel for the appellant has stated that the appellant is willing to settle the entire dispute by giving an amount of Rs.9,56,000/- to the respondent over and above the amount of Rs.68,000/-, which is paid by way of cheque today. He says that the said amount of Rs.9,56,000/- shall be paid in three instalments by post dated cheques i.e. two cheques being Nos.293791 and 293796 each of Rs.3,00,000/- (rupees three lakh only) payable on 15th October, 2006 and 15th November, 2006 respectively and a cheque being No.293797 for the balance amount of Rs.3,56,000/- payable on 15th December, 2006. This will be in full and final settlement of the entire dispute. The learned

counsel for the respondent has stated that the respondent is agreeable to such settlement.

5. The learned counsel for the respondent states that the respondent will write letter to United States Counsulate, Mumbai stating therein that in view of the present settlement arrived at between the parties, she is withdrawing all the allegations made against the appellant-husband. Accordingly, the learned counsel for the respondent has tendered a copy of letter dated 18.9.2006 written by the respondent to U.S.Consulate General. The said letter is taken on record and marked "A". The appellant will send a copy thereof to Syntel India Ltd., Unit-112, SDF, III, SEEPZ, Andheri (E), Mumbai-400 096.

6. The respondent-wife has told us that in view of the settlement arrived at between the parties she does not wish to continue with the proceedings being R.C.C.No.31 of 2004 filed by her against the respondent under sections 323, 504 and 506 of the Indian Penal Code. In view of the settlement and in

the light of the judgment of the Supreme Court in **B.S.Joshi and Anr. Vs. State of Haryana and anr., JT 2003(3) S.C. 277**, we quash the proceedings being R.C.C.No.31 of 2004 pending between the parties before the learned Judicial Magistrate, F.C., Pune Court No.8.

7. We make it clear that in case any of the cheques handed over by the appellant-husband to the respondent-wife get dishonoured, the aforesaid criminal proceedings shall stand revived.

8. By mutual agreement between the parties, the custody of the child Akash is with the respondent-wife. The respondent is staying at Pune. By prior intimation, the appellant-husband shall visit Pune as per the convenience of child Akash and have access to the child. The time and period of meeting the child will be mutually decided by the parties. Needless to say that if the child is willing, the appellant should be allowed to take the child out for an hour and the appellant shall bring back the child to the respondent after one hour. If

the parents of the appellant want to see the child, they are at liberty to visit Pune and meet the child as per child's convenience and by mutual agreement.

9. Liberty to the parties to move this Court in case any variation of the order is needed as regards the access to the child.

10. The appellant and the respondent confirm that now they have no claim against each other. The respondent is desirous of buying a flat. The respondent shall buy the flat in the joint name of herself and her son Akash.

11. Family court appeal is disposed of in the aforestated terms.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]